

REMARKS/ARGUMENTS

The Examiner has delineated the following inventions as being patentably distinct.

Group I: Claims 1-11, drawn to a process of producing silicon; and

Group II: Claims 12, drawn to a feed mixture.

Applicants provisionally elect with traverse the invention of Group I (Claims 1-11) drawn to a process of producing silicon.

The claims of Groups I and II are integrally linked as method of making and method of use.

Restriction is only proper if the claims of the restricted groups are patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusions in regard to patentable distinction. Final product, method of making and method of use, which is critical to the patentability of the process, should be examined together. It is a technical relationship that involves the same feature and it is this technical relationship that defines the contribution which each of the Groups taken as a whole makes over the prior art.

Different classification of subject matter to be divided is not conclusive proof of independent status and divisibility. Products, method of making, and method of using should be examined together on the merits especially wherein the sole disclosed utility of the product is that recited in the specification. Product, method of making and method of use are considered related inventions under 37 C.F.R. § 1.475(b) and unity of invention between the groups exists.

Applicants respectfully traverse on the additional groups that the Office has not shown that a burden exists in searching the entire application.

Further, the M.P.E.P. at § 803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants submit that a search of all of the claims would not constitute a serious burden on the Office. In fact the International Search Authority has searched all of the claims together. As the Office has not shown any evidence that a restriction should now be required when the International Preliminary Examination Report did not, the restriction is believed to be improper. 37 C.F.R. § 1.475(b) provides in relevant part that “a national stage application containing claims to different categories of inventions will be considered to have unity of invention if the claims are drawn only to --(3) a product, process adapted for the manufacture of said product and the use of said product.

For the reasons set forth above, Applicants request that the Restriction Requirement be withdrawn.

Applicants further request that if the invention of Group I is found allowable withdrawn Group II which include the limitation of the allowable claims be required.

Respectfully submitted,

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